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**PETITION FOR
A WRIT OF
CERTIORARI**

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IN THE
Supreme Court of the United States

HAMILTON FOODS, INC.,

Petitioner,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Kansas corporation; JACK BELYEA, doing business as REFRIGERATED EXPRESS COMPANY; DOE ONE, DOE Two, Doe THREE and Doe FOUR,

Respondents.

**PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF AP-
PEALS FOR THE NINTH CIRCUIT.**

*To the Honorable Fred M. Vinson, Chief Justice, and to
the Associate Justices, of the Supreme Court of the
United States:*

The petitioner, HAMILTON FOODS, INC., prays that a Writ of Certiorari issue to the United States Circuit Court of Appeals for the Ninth Circuit to review the judgment of that Court entered on March 28, 1948, sustaining the judgment of the United States District Court for the Southern District of California, Southern Division. This Court has jurisdiction under Title 28 of the United States Code Annotated, Section 1254.

A certified transcript of the record in the case including the proceedings in the Court of Appeals is furnished herewith in compliance with Rule 38 of the Rules of this Court.

Jurisdiction.

The Court has jurisdiction under Title 28, United States Code, Section 347.

Summary of Statement of the Matter Involved.

Petitioner shipped a car of frozen shrimp creole from Chicago, Illinois, to Los Angeles, California. The merchandise was consigned to the petitioner in care of its agent in Los Angeles. Part of the merchandise was destined for Los Angeles and part of it to be reshipped to Bakersfield and San Francisco.

At the time the shrimp was delivered to the carrier, it was frozen to a temperature of 15 degrees below zero. It was loaded into a pre-cooled refrigerated car supplied by the carrier. The instructions to the carrier were:

"Insure icing to capacity, 13,000 lbs. crushed ice and 3900 lbs. Salt. Re-ice to capacity crushed ice 30 percent salt at all regular icing stations and oftener, if delayed."

The car was then iced to capacity with 13,000 pounds of crushed ice and 3900 pounds of salt. As an added precaution, 1000 pounds of dry ice was placed within the car and on top of the shrimp.

The car left Chicago on April 2, 1946, at 11:30 a. m. and the shrimp was in a good and frozen condition. The carrier iced regularly en route, including icing at San Bernardino, California, on April 8, 1946, where 1500 pounds of ice was added. The car was made available to the consignee in Los Angeles, California, on April 11, 1946, at 11:30 a. m., but no ice was added to the car from the time it left San Bernardino on April 8 to the time it reached the consignee on April 11.

During this three-day period, the temperature in Los Angeles was 88°. Whereas no ice was added between San

Bernardino and Los Angeles during this three-day period, the average icing time between icing stations en route was eighteen hours and fifty minutes and the average amount of ice added at each station was 1166 pounds. Los Angeles is a regular icing station.

When the car was opened, consignee's agent observed that the car was unusually warm, that the cartons of shrimp near the door were defrosted and soft, in fact so soft that the juice was oozing through the packages and in placing his finger on the lading, it penetrated into the shrimp itself. The carrier was immediately notified and consignee's agent obtained a thermometer which registered 54°. It should have registered 5° or less. Consignee's agent then attempted to find refrigerated space in Los Angeles without success and in order to avoid leaving the shrimp in the car, placed the shrimp in his refrigerated truck, together with frozen broccoli and frozen cauliflower, for transportation to Bakersfield and San Francisco. This truck had mechanical refrigeration, was of modern design and was well insulated. The truck left Los Angeles the same day and arrived in Bakersfield the following morning. The frozen broccoli and frozen cauliflower arrived in good condition but the shrimp in a damaged condition and the carrier stipulated that the shrimp arrived in Bakersfield and San Francisco damaged and unfit for human consumption.

The Court granted damages for 40 cartons of shrimp which were observed as damaged when the car was opened but refused to grant damages for the 415 cartons which were likewise damaged but which damage was not discovered by the consignee until it reached Bakersfield and San Francisco.

—4—

Questions Presented.

THE DECREE OF THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT RAISES THE FOLLOWING QUESTIONS OF LAW:

QUESTION ONE: Where a court holds that a carrier was negligent in transporting a frozen food product from a point of origin interstate to a point of destination but the damage to a portion of the lading is not ascertained until possession of the lading passed out of the hands of the carrier, is the carrier not liable for such damage even though its discovery was not made until after the lading passed out of its hands where it is established that no intervening act took place which could cause damage?

QUESTION Two: Where the icing instructions of the shipper require the lading to be iced to capacity at all regular icing stations and oftener, if delayed, and no icing takes place for a period of 64 hours and 25 minutes at a time when the temperature was 86 to 88 degrees, was this not a breach of the carrier's instructions and did this not constitute negligence for which the carrier is liable?

QUESTION THREE: Where Rule 225 of the Perishable Protective Tariff No. 13 of the Interstate Commerce Act, 49 U. S. C. A., Sections 1, *et seq.*, provides that cars arriving at destination with bunkers less than three-fourths full of ice are to be re-iced to capacity and the carrier fails to re-ice, is this not a sufficient breach of the carrier's duties and does this not constitute negligence sufficient to enable the shipper to recover for damage to the merchandise notwithstanding the fact that the damage was not discovered until after the lading left the possession of the carrier?

Reasons Relied Upon for the Allowance of the Writ of Certiorari.

The discretionary power of this Court is invoked upon the following grounds:

1. Because of the importance to the public of an authoritative determination by this Court of the questions involved.
2. Because the decision of the District Court which was affirmed by the Circuit Court for the Ninth Circuit is contrary to law and contrary to the District Court's own determination of the basic facts found by the Court. The District Court found:
 - A. That the lading (frozen shrimp creole) left Chicago in a good and frozen condition;
 - B. That Los Angeles was a regular icing station but that no ice had been added from the time the car left San Bernardino until the time the lading was delivered to the consignee;
 - C. That evidence of failure to ice and evidence of damage to the lading was apparent when the car was opened in Los Angeles;
 - D. That the merchandise upon receipt in Bakersfield and San Francisco was contaminated and not fit for human consumption and that the consignee's agent who transported the shrimp was not guilty of negligence.

The District Court granted judgment only for the lading found to be damaged upon arrival in Los Angeles but failed to give damages for the lading likewise damaged but which damage was not discovered until after the lading left the possession of the carrier.

3. Because the decision of the District Court as affirmed by the Circuit Court of Appeals for the Ninth Circuit in holding that the carrier was not liable is in conflict with the basic principles as set forth in the decisions of this Court in the cases of *Ohio Galvanizing & Mfg. Co. v. So. Pacific Co.*, 39 F. 2d 840 (C. C. A. 6, 1930, cert. den. 282 U. S. 879); *Julius Klugman's & Sons v. Oceanic Steam Navigation Co.*, 42 F. 2d 461 (D. C. N. Y., 1930); *McCready et al v. Holmes*, 15 Fed. Cases No. 8733; *Sutton v. Minneapolis & St. L. Ry. Co.*, 222 Minn. 233, 23 N. W. 2d 561.

Wherefore your Petitioner respectfully prays that this power be granted and that a Writ of Certiorari be issued directed to the Circuit Court of Appeals for the Ninth Circuit.

ALBERT H. ALLEN,

HYMAN GOLDMAN,

Attorneys for Petitioner.

State of California, County of Los Angeles—ss.

ALBERT H. ALLEN, being duly sworn, deposes and says: That he is the attorney for the Petitioner herein; that he prepared the foregoing petition and that the allegations thereof are true as he verily believes.

ALBERT H. ALLEN.

Subscribed and sworn to before me this 7th day of April, 1949.

MARGUERITE F. CRIPPS,
Notary Public in and for said County and State.

My commission expires January 3, 1952.

—X—

The District-Secretary and Comptroller, sun-Golden-States,
1233 Park Avenue, New York, N.Y. A. 27, 1937.

This letter encloses a copy of the "Report of the Committee
on Taxation and Budget" which has been submitted to the
Legislature by the State Auditor. It is being sent to you
for your information. Please let us know if we can be of
any assistance.

WALTER H. THOMAS,
President of the American Society of Appraisers for the Ninth Circuit
and in addition to the article and the table in the committee's
report, I have enclosed a copy of the "Report of the Legislative Committee"
of the State of Oregon (Washington, D.C., 1937), which
provides a good example of how to do it.

Very truly yours,
Walter H. Thomas,
President of the American Society of Appraisers for the Ninth Circuit
and in addition to the article and the table in the committee's
report, I have enclosed a copy of the "Report of the Legislative Committee"
of the State of Oregon (Washington, D.C., 1937), which
provides a good example of how to do it.

When you give this letter to the appropriate committee, please be granted all the time necessary to be fully informed in the preparation of the bill for the consideration of the Legislature.

Very truly yours,

Walter H. Thomas,

President of the American Society of Appraisers for the Ninth Circuit.

—01—

~~Supreme Court of the United States~~

IN THE Supreme Court of the United States

HAMILTON FOODS, INC.,

Petitioner,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Kansas corporation; JACK BELYEY, doing business as REFRIGERATED EXPRESS COMPANY; DOE ONE, DOE Two, DOE THREE and DOE FOUR,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

The Opinions of the Courts Below.

The opinion of the Court of Appeals for the Ninth Circuit was rendered *per curiam* and no opinion was written. It appears in the record filed herewith at page 168. The Findings of Fact and Conclusions of Law of the District Court are in the record [R. 17-29]. The trial Court's opinion was delivered after the close of the trial and appears at pages 14-17 of the record. It was not reported. It would appear that the trial Court reasoned that the carrier was negligent, that damage was sustained by appellant as a result of such negligence but damages were not granted to appellant for that portion of the lading in which the damages were not discovered until after the lading left the possession of appellant.

Jurisdiction.

The grounds for jurisdiction are:

1. The decree of the Court of Appeals was entered February 11, 1949 [R. 167].
2. The judgment was rendered in a suit involving a shipment in interstate commerce in which the damage alleged was in excess of \$3,000 in which plaintiff and defendants were citizens of different states.
3. The statute under which the jurisdiction of this Court is invoked is Title 28, United States Code, Section 347.

Mahnich v. So. S. S. Co., 64 Sup. Ct. 455, 321 U. S. 96, 88 L. Ed. 561;

In re 620 Church St. Corp., 57 Sup. Ct. 88, 299 U. S. 24, 81 L. Ed. 16 (Rehearing denied, 57 Sup. Ct. 229, 299 U. S. 623, 81 L. Ed. 458);

Fed. Trade Comm. v. Pac. State Paper Trade Assn., 47 Sup. Ct. 255, 273 U. S. 52, 71 L. Ed. 534.

Statement.

The facts are stated in the Petition.

Statutes.

The Statutes under which this case arises which are necessary to be considered are as follows:

Interstate Commerce Act, 49 U. S. C. A., Section 1, *et seq.*, and Rule 225 of the Perishable Protective Tariff No. 13.

Specification of Errors.

The errors which Petitioner will urge if the Writ of Certiorari is allowed, are that the Court of Appeals for the Ninth Circuit erred:

1. In failing to reverse the judgment of the District Court which allowed Petitioner damages in the sum of \$396, plus freight in the sum of \$26, but failed to allow petitioner damages in the sum of \$4455 plus loss of freight in the sum of \$269.75.
2. In failing to hold that the law established by the decision of *Crinella v. Northwestern Pacific Railroad Co.*, 85 Cal. App. 440, 259 Pac. 774; *Hall & Long v. Railroad Companies*, 80 U. S. 13 Wall. 367, 20 L. Ed. 659; *Bonstein v. Baltimore & O. R. Co.*, 29 Fed. Supp. 837; *Michigan Central Railroad Co. v. Mark Owen*, 256 U. S. 427; *Southwestern Railroad Company v. Prescott*, 240 U. S. 632, 60 L. Ed. 836.

Summary of Argument.

The points of the argument restate the reasons relied upon for the allowance of the Writ of Certiorari. (Pp. 12 to 16, *infra*.)

ARGUMENT.

I.

The Court of Appeals for the Ninth Circuit Erroneously Held That the Findings of the Trial Court Were Substantiated by the Evidence and Erroneously Held That the Judgment Was Supported by the Findings of Fact.

In the case of *Crinella v. Northwestern Pacific Railway Company*, 85 Cal. App. 440, 259 Pac. 774, the Court held there where merchandise is delivered to a carrier in good condition but is received by the consignee in a deteriorated condition, the shipper has established a *prima facie* case and thereafter the burden of proof is on the defendant carrier to show that there was no damage or, if there was damage, it was no fault of the carrier. The case holds that the burden of proof is then shifted to the carrier who must prove that he was free from negligence and that the damage to the goods resulted either from an act of God, public enemy or the inherent nature of the goods themselves.

In the instant case, the Court found that the merchandise was shipped in a good and frozen condition but arrived in Los Angeles in a damaged condition and rendered judgment only for that portion of the merchandise which was found to be damaged when the car was opened. The Court completely ignored the stipulation of the parties to the effect that the merchandise when it reached Bakersfield and San Francisco was not fit for human consumption. This was a total loss which loss occurred in the shipment from Chicago to Los Angeles, notwithstanding the

fact that it was not definitely ascertained that the merchandise was damaged until after it passed out of the hands of the carrier. The Court overlooked the findings of fact of the trial Court to the effect that the shipper who shipped the merchandise from Los Angeles to San Francisco was not negligent. [Finding of Fact 24, Tr. 26.]

Since the Court found that the shipper who took possession of the merchandise in Los Angeles was not guilty of negligence and since the Court found that the merchandise was properly shipped from Los Angeles to Bakersfield and San Francisco [Finding of Fact 19, Tr. 24], the Court improperly awarded damages only for the merchandise which was visibly bad when it arrived. The Court failed to award damages, however, for the merchandise which was damaged when it arrived but which damage was not discovered until after the consignee took possession of the shrimp. The Court found that no ice had been added from the time the car left San Benardino on April 8, 1946, until it was delivered to the consignee on April 11, 1946 [Finding 12, Tr. 22], and that the shipper who took possession of the merchandise remonstrated to the carrier in regard to the warmth of the car [Finding 16, Tr. 23].

While the facts in the case of *Julius Klugman's & Sons v. Oceanic Steam Navigation Co.*, 42 F. 2d 461 (D. C. N. Y. 1930), precluded a recovery, the principles of law as set down in that case are applicable to the case before the Court. While in the *Klugman* case recovery was precluded, the failure to recover was based upon the fact that

the furs which were unloaded from a ship in New York were placed upon a truck and then transported to a warehouse where it was subsequently discovered that the package was missing. In that case, the Court found that there had been such a change of possession that afforded conjecture as to where the disappearance took place. The facts in the case before the Court specifically precluded such a finding because the Court found that the consignee's agent who took possession of the lading from the carrier was not guilty of negligence and that the consignee has so handled the lading as to make it impossible for any damage to occur while in his possession. The Court found that the same car which carried the shrimp also carried frozen broccoli and frozen cauliflower which arrived at destination in good condition. The Court found that the consignee's agent was not guilty of negligence. Therefore, the damage could only have occurred prior to the consignee's taking possession.

It is therefore apparent that the damage was incurred prior to delivery to the consignee but was not discovered until after it left the carrier's possession.

Since the Court awarded damages for 40 cases visibly bad, the Court placed negligence on the carrier. The Court therefore erred in not granting judgment for the full damage since nothing occurred from the time the lading left the carrier and the time it was discovered to be bad. The Circuit Court of Appeals erred in failing to properly consider all of the findings of the trial Court.

II.

The Appeal Court for the Ninth Circuit Failed to Properly Consider the Findings of the Trial Court and Failed to Consider That the Trial Court Determined in Effect That the Carrier Breached His Contract and Failed to Carry Out the Instructions of the Shipper.

The trial Court found that the shipper gave specific instructions to the carrier to ice at all regular icing stations and oftener if delayed. The trial Court found that though the shipping instructions provided that the car was to be iced to capacity and oftener if delayed, no ice was added from the time the car left San Bernardino on April 8, 1946, to the time it arrived on April 11, 1946, notwithstanding the temperature in Los Angeles reached 88 degrees. This was a delay which required additional icing and the failure to so ice was negligence.

It must be remembered that the merchandise remained in the possession of the carrier until possession was taken by the shipper, notwithstanding the fact that the car was available to the shipper at an earlier date. In the case of *Michigan Central Railroad Co. v. Mark Owen*, 256 U. S. 427, this Court held that where a carrier places a car on a public delivery track, no delivery has been made to the consignee until the merchandise in the car is actually removed by the consignee and this notwithstanding the fact that notice was given the consignee who accepted the car, broke the seals and started to unload.

In the case of *Wilson & Company v. Werner Transportation Co.*, 329 Ill. Appeals 533, 69 Northeastern 2d 713, the Court held that where the evidence showed that the carrier left the vehicle overnight without ice, it was sufficient evidence to warrant recovery against the carrier. In the case before the Court, the evidence was that the Court found that the carrier left the car without ice for a period of three days.

The Court found that Los Angeles was a regular icing station and failure to ice in Los Angeles was negligence on the part of the carrier and a breach of its contract.

The Court further failed to consider the duty of the carrier and failed to take into consideration the *Interstate Commerce Rules and Regulations* and particularly Rule 225 of the Perishable Protective Tariff No. 13 which regulations are under the Interstate Commerce Act, 49 U. S. C. A., Sec. 1, *et seq.*. This provision of the Perishable Protective Tariff provides that where cars arrive at destination with bunkers less than three-quarters full of ice, the car is to be re-iced to capacity.

Since the car arrived with less than three-quarters of ice in the bunkers and the Court found [Finding 13, Tr. 22] that Los Angeles is a regular icing station, the Court failed to properly award the damages resulting from the negligence of the carrier and its failure to carry out its instructions. It was stipulated by the parties that 455 cases of the shrimp were found to be bad when it arrived in Bakersfield and San Francisco and not fit for human consumption, and the Court should have awarded damages for the total loss.

Conclusion.

It is respectfully submitted that the Court of Appeals for the Ninth Circuit erred in affirming the judgment of the trial Court and in improperly construing Rule 225 of the Perishable Protective Tariff No. 13 of the Interstate Commerce Act, 49 U. S. C. A., Sections 1, *et seq.* The Circuit Court erred in failing to properly construe and consider all of the findings of the trial Court and erred in failing to award the damages to the petitioner.

It is believed that the conclusions of law involving the interpretation of the duties of the carrier and involving the duties of the carrier to fulfill the instructions given him by the shipper and the interpretation of the Interstate Commerce Act, to-wit, Rule 225 of the Perishable Protective Tariff No. 13 under said act, should be determined by this Court.

Respectfully submitted,

ALBERT H. ALLEN,

HYMAN GOLDMAN,

Attorneys for Petitioner.

OPPOSITION

BRIEF

IN THE

Supreme Court of the United States

~~QUESTION PRESENTED~~

SUBJECT INDEX

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IN THE

Supreme Court of the United States

October Term, 1948

No. 717.

HAMILTON FOODS, INC.,

Petitioner,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Kansas corporation; JACK BELYEA, doing business as Refrigerated Express Company; DOE ONE, DOE Two, DOE THREE and DOE FOUR,

Respondents.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

I.

Statement of the Case.

The following statement is submitted for the sole purpose of correcting errors and misleading statements in petitioner's "Summary of Statement of the Matter Involved."

The record discloses:

- (1) Respondent was obligated under the terms of the bill of lading contract to deliver the carload of shrimp creole to Los Angeles [Pltf. Ex. 5];

(2) The railroad car arrived in Los Angeles on time with no delays [Pltf. Ex. 1, p. 2; R. p. 124]; 25 to 40 cases were soft and partially defrosted [R. p. 75]; the remainder of the load was in good condition [R. pp. 148-149];

(3) No analysis of the shrimp creole was made at Los Angeles to determine whether or not it was fit for human consumption [R. p. 101];

(4) More than 500 cases delivered at Los Angeles were undamaged and were disposed of in the ordinary course of trade [R. pp. 59, 74, 148-149];

(5) No damage would have occurred to any of the cases (with the possible exception of 25 to 40 cases) if they had all been placed in cold storage in Los Angeles [R. pp. 75, 82];

(6) Refrigerator cars may arrive in good condition with the contents thereof thoroughly frozen and yet a few cases in and around the doorway may be soft and defrosted [R. p. 152];

(7) 40 to 45 minutes expired during the process of unloading the freight car in Los Angeles [R. p. 99];

(8) The lading was transported from Los Angeles to San Francisco via the San Joaquin Valley during the month of April. Portions of the contents of the truck were unloaded at Bakersfield and Sacramento, and the car doors were necessarily open during such unloading process [R. p. 95];

(9) Some (probably 35) cases were delivered to consignees in Sacramento and no claim was registered by petitioner for these cases [R. p. 95];

(10) The car arrived in San Francisco too late to make delivery, and the truck was sent to San Jose where the car doors were again opened so that additional dry ice could be inserted therein [R. p. 95]. Mr. Belyea, the consignee's agent, testified that he did not know when the shrimps were actually deposited in the warehouse in San Francisco [R. p. 96].

Thus, there is no proof of damage to more than 25 to 40 cases at Los Angeles; there is, however, affirmative proof that the carload was in good condition when it arrived in Los Angeles, and that the damage to the 415 cartons was incurred subsequent to the termination of the rail movement.

At the very least, it is a question of fact for the trial court to determine whether (a) there were 25 to 40 cases damaged when the car arrived in Los Angeles, or (b) whether there were 415 cases damaged when the car arrived in Los Angeles. The trial court found for the defendant on this disputed issue of fact. The Court of Appeals affirmed on the ground that the trial court's finding was not clearly erroneous. (Rules of Civil Procedure for the District Court, Rule 52(a), 28 U. S. C. A., following Sec. 723(c).)

II.

ARGUMENT.

Summary of Argument.

- A. THE FINDINGS OF THE TRIAL COURT WILL BE UPHELD UPON APPEAL UNLESS THEY ARE "CLEARLY ERRONEOUS."

Rule 52(a), 28 U. S. C. A., following Sec. 723(c);

Independence Indemnity Co. v. Sanderson, 57 F. 2d 125 (C. C. A. 9, 1932);

Burkhard Investment Co. v. U. S., 100 F. 2d 642 (C. C. A. 9, 1938).

- B. THIS COURT WILL NOT GRANT A WRIT OF CERTIORARI MERELY TO REVIEW A DISPUTED QUESTION OF FACT.

Wilkerson v. McCarthy, et al., U. S., 93 L. Ed. 403;

Layne & Bowler Corp. v. Western Well Works, 261 U. S. 387, 393, 67 L. Ed. 712;

"*Mechanics of the Supreme Court's Certiorari Jurisdiction*," by B. Boskey, 46 Col. Law. Rev. 255.

A. The Findings of the Trial Court Will Be Upheld Upon Appeal Unless They Are "Clearly Erroneous."

For the purposes of this response it is unnecessary to discuss petitioner's charge that respondent was negligent. The only question raised in the Petition is whether or not the court awarded sufficient damages. The answer to this question involves a determination of fact.

The facts indicate that the trial court would have erred had it found that *more* than 25 to 40 cases of shrimps were damaged upon arrival of the car in Los Angeles. Petitioner's counsel admitted that:

"* * * 500 cases or 450 cases of the same shipment were good and were used in the ordinary course of trade." [R. p. 59.]

In cases where a jury is waived the judgment of the trial court has the force and effect of a jury and the judgment will not be reversed where there is substantial evidence upon which to base it.

Independence Indemnity Co. v. Sanderson, 57 F. 2d 125 (C. C. A. 9, 1932);

Burkhard Investment Co. v. U. S. 100 F. 2d 642 (C. C. A. 9, 1938);

Rule 52(a), 28 U. S. C. A., following Sec. 723(c).

B. This Court Will Not Grant a Writ of Certiorari Merely to Review a Disputed Question of Fact.

It has been the practice of the Supreme Court to deny a Writ of Certiorari or even to dismiss a Writ after it has been granted in cases that involve no more than disputed questions of fact. This court will not “* * * take cases merely to review facts already canvassed by two and sometimes three courts even though those facts may have been erroneously appraised.” (Justice Frankfurter concurring in *Wilkerson v. McCarthy, et al.*, U. S., 93 L. Ed. 403, 411 No. 53 Oct. Term 1948.) See also: *Layne & Bowler Corp. v. Western Well Works*, 261 U. S. 387, 393, 67 L. Ed. 712; “*Mechanics of the Supreme Court’s Certiorari Jurisdiction*,” by *B. Boskey*, 46 Col. Law Rev. 255.

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in this court and that the petition be denied.

Respectfully submitted,

H. K. LOCKWOOD,

ROBERT W. WALKER,

LOUIS M. WELSH,

Attorneys for Respondent.



CERTIORARI

DENIED